

SENATE BILL NO. 433

BY SENATOR MARIONNEAUX

1 AN ACT

2 To amend and reenact R.S. 9:3573.1, 3573.2(A), 3573.3(1), (8), (9) and (10), 3573.4,
3 3573.6(A)(2), 3573.10(C), 3573.11(B) and (C), 3573.13(B) and (C), and 3573.16,
4 and to repeal R.S. 9:3573.3(7), 3573.9, and 3573.17, relative to the Louisiana
5 consumer credit law; to provide an exception to licensing requirements for certain
6 attorneys; to provide certain terms, procedures, conditions, requirements, definitions,
7 and exemptions; to provide for damages; to provide for orders, injunctions,
8 publication, and availability of records to the general public; to provide for penalties;
9 to provide for notification or service; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 9:3573.1, 3573.2(A), 3573.3(1), (8), (9) and (10), 3573.4,
12 3573.6(A)(2), 3573.10(C), 3573.11(B) and (C), 3573.13(B) and (C), and 3573.16 are hereby
13 amended and reenacted to read as follows:

14 §3573.1. Short title; purpose; license; renewal; application; change of location;
15 change of name; fees

16 A. This Part shall be known and may be cited as the "Credit Repair Services
17 Organizations Act."

18 B. The Legislature of Louisiana recognizes the right of the citizens of the
19 state to utilize the services of qualified credit repair organizations for advice and
20 assistance in improving their credit matters. The Legislature of Louisiana does
21 hereby declare that it is in the best interest of the citizens of the state to protect
22 consumers in their efforts to improve their credit record, history, and rating. The
23 purpose of this Part is to promote the safety and welfare of the people of this state
24 by providing for regulatory oversight **a statutory structure** in an area in which
25 unqualified or unscrupulous individuals may injure or mislead the public.

26 ~~C. No person shall conduct business as a credit repair services organization~~

1 ~~without first having obtained a license from the commissioner and paying a five~~
2 ~~hundred dollar application fee.~~

3 ~~D.(1) No license shall be issued unless the commissioner, upon investigation,~~
4 ~~finds that the financial responsibility, character, and fitness of the applicant, its~~
5 ~~owners, its partners if the applicant is a partnership, its members if the applicant is~~
6 ~~a limited liability company, and its officers and directors if the applicant is a~~
7 ~~corporation, are such as to warrant a belief that the business will be conducted~~
8 ~~honestly and fairly within the purposes of this Part. The commissioner may grant~~
9 ~~restricted or conditional licenses.~~

10 ~~(2)(a) Upon written request, an applicant may seek a hearing on the question~~
11 ~~of his qualification for a license if either:~~

12 ~~(i) The commissioner has notified the applicant in writing that his application~~
13 ~~has been denied.~~

14 ~~(ii) The commissioner has not issued a license within sixty days of the date~~
15 ~~a complete application was filed.~~

16 ~~(b) A request for a hearing may not be made more than thirty days after the~~
17 ~~applicant has received the written notice notifying him that the application was~~
18 ~~denied and stating the commissioner's findings in support of the denial of the~~
19 ~~application.~~

20 ~~E. Every application for a license shall contain such information as the~~
21 ~~commissioner may require to determine if the applicant qualifies for a license.~~

22 ~~F. Annually by November first each credit repair services organization shall~~
23 ~~file a renewal application and pay a renewal fee of four hundred dollars. An annual~~
24 ~~renewal application received by the commissioner postmarked after December first~~
25 ~~shall be accompanied by a late filing fee of two hundred dollars, in addition to the~~
26 ~~annual renewal fee.~~

27 ~~G. If the annual renewal application and renewal fee is not received~~
28 ~~postmarked by December thirty-first, the license shall lapse without a hearing or~~
29 ~~notification, and the license shall not be reinstated; however, the person whose~~
30 ~~license has lapsed may apply for a new license. No new license shall be issued upon~~

1 ~~the filing of a new application by any person against whom any penalty or fee has~~
2 ~~been imposed unless and until such penalty or fee previously accrued under this~~
3 ~~Section has been paid.~~

4 ~~H. A license cannot be sold or transferred by any means.~~

5 ~~I. A credit repair services organization shall not change location or change~~
6 ~~its name without prior written approval of the commissioner. A fee of one hundred~~
7 ~~dollars is required to change a location or name. In addition to the one hundred dollar~~
8 ~~fee, a penalty of two hundred dollars shall be paid if prior written approval is not~~
9 ~~obtained.~~

10 ~~J.(1) Any person whose application, or renewal application, for licensure~~
11 ~~under this Part, has been denied for any reason, may not reapply for a license under~~
12 ~~this Part until after at least three years from the date of the order of denial, unless the~~
13 ~~commissioner, in his sole discretion, prescribes an earlier or later date.~~

14 ~~(2) For purposes of this Subsection, the term "order" shall mean the first to~~
15 ~~occur of either:~~

16 ~~(a) The date of the issuance of the commissioner's notification of denial of~~
17 ~~the person's application; or~~

18 ~~(b) Sixty days after the filing of that application.~~

19 ~~(3) For purposes of this Subsection, the term "person" shall mean the~~
20 ~~applicant, its owners, and its members if the applicant is a limited liability company,~~
21 ~~its partners if the applicant is a partnership, its officers and directors if the applicant~~
22 ~~is a corporation, and any other person determined by the commissioner, in his sole~~
23 ~~discretion, to be closely related to the person.~~

24 ~~K.(1) No person shall acquire or control a credit repair service organization~~
25 ~~license through the acquisition or control of more than fifty percent of the ownership~~
26 ~~interest in a licensee without first having obtained written approval from the~~
27 ~~commissioner, pursuant to an application for a change of control in ownership of the~~
28 ~~licensee, filed in the manner and on a form prescribed by the commissioner and~~
29 ~~accompanied by a fee of three hundred dollars. Any person who acquires controlling~~
30 ~~interest in a licensee without first having filed an application for change of control~~

1 ~~with the commissioner shall be deemed to be operating without proper authority and~~
2 ~~subject to the penalties of this Part.~~

3 ~~(2) For the purposes of this Section, a person acquires or controls the licensee~~
4 ~~when at least one of the following conditions exists:~~

5 ~~(a) The person, directly or acting through one or more other persons, owns,~~
6 ~~controls, or has the power to vote more than fifty percent of any class of stock of the~~
7 ~~corporation.~~

8 ~~(b) The person controls, in any manner, the election of a majority of the~~
9 ~~directors of the corporation.~~

10 ~~(c) The commissioner determines, after notice and an opportunity for hearing,~~
11 ~~that the person directly or indirectly exercises a controlling influence over the~~
12 ~~management or the policies of the licensee.~~

13 ~~(3) When the licensee is a limited liability company or a limited liability~~
14 ~~partnership, the licensee is acquired or controlled if one of the following occurs:~~

15 ~~(a) There is a change of managers or general partners.~~

16 ~~(b) An existing manager or general partner acquires or controls the licensee~~
17 ~~as provided in Paragraph (2) of this Subsection.~~

18 ~~(c) The commissioner determines that there has been a significant change in~~
19 ~~the membership or partnership interests, including but not limited to a change in~~
20 ~~ownership or control, directly or indirectly affecting twenty-five percent or more of~~
21 ~~the total interest of the licensee.~~

22 ~~(4) A corporation that is a licensee shall notify the commissioner within sixty~~
23 ~~days of a stockholder becoming a principal stockholder, which is defined for~~
24 ~~purposes of this Section as owning ten percent or greater of the outstanding stock of~~
25 ~~the corporation.~~

26 §3573.2. Definitions; exemptions

27 A. As used in this Part, the following terms shall have the following
28 meanings:

29 (1) "Buyer" means an individual who is solicited to purchase or who
30 purchases the services of a credit repair services organization.

~~(2) "Commissioner" means the commissioner of the office of financial institutions.~~

~~(3)~~(2) "Consumer reporting agency" shall have the meaning assigned by Section 603(f), Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.).

~~(4)~~(3) "Credit repair services organization" means a person who, with respect to a buyer, in return for the payment of money or other valuable consideration, directly or indirectly, provides or represents that he can or will, directly or indirectly, provide any of the following services:

(a) Improving a buyer's credit record, history, or rating.

(b) Advice or assistance to a buyer with regard to improving a buyer's credit record, history, or rating, including the sale of a self-help instructional guide.

~~(5)~~(4) "Person" means an individual, corporation, partnership, trust, association, joint venture pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein.

* * *

§3573.3. Prohibited conduct

A credit repair services organization or a salesperson, agent, or representative of a credit repair services organization, who sells or attempts to sell the services of a credit repair services organization shall not:

(1) Charge a buyer or receive from a buyer money or other valuable consideration unless the credit repair services organization has obtained, in accordance with R.S. 9:3573.4, a surety bond issued by a surety company authorized to do business in this state ~~or has established and maintains a trust account at a federally insured bank or savings association located in this state in which the amount required by R.S. 9:3573.4(E) is held in trust as required by R.S. 9:3573.4.~~

* * *

~~(8) As determined by the commissioner, s~~Structure a transaction with a buyer in such a manner as to attempt to circumvent the provisions of this Part.

(9) Divide a transaction into multiple transactions, ~~as determined by the commissioner,~~ such as by attempting to sell or selling any publication, including but

1 not limited to any book, pamphlet, or electronic or computer guide, related in any
2 way to improving a buyer's credit record, history, or rating, to a buyer and, directly
3 or indirectly, through any affiliate, subsidiary, related person, or otherwise, providing
4 services to the buyer to assist him in utilizing or implementing the information or
5 directions contained therein, unless all charges and fees related to such sale and
6 service combined do not exceed the bona fide costs for publishing the copy of such
7 publication.

8 (10) ~~As determined by the commissioner, v~~Violate any provision of the
9 federal Credit Repair Organizations Act, 15 U.S.C. 1679 et seq., as amended. Any
10 violation of such Act shall constitute a violation of state law.

11 §3573.4. Bond; trust account

12 A. All credit repair services organizations ~~required to be licensed by the~~
13 ~~commissioner~~ shall obtain a surety bond issued by a company licensed to do business
14 in Louisiana ~~or establish a trust account as provided in this Section.~~

15 B. The bond shall be filed with the ~~Office of Financial Institutions~~ **attorney**
16 **general of Louisiana**. ~~If a trust account is established, a notarized or otherwise~~
17 ~~official notification of the deposit by the depository institution shall be filed with the~~
18 ~~Office of Financial Institutions. Such notification shall include, at a minimum, the~~
19 ~~name of the financial institution, name of the credit repair services organization,~~
20 ~~account number, and verification that the account is established in accordance with~~
21 ~~the terms set forth in this Section.~~

22 C. The bond ~~or trust account required~~ must be in favor of the state of
23 Louisiana for the benefit of any person who is damaged by any violation of this Part.

24 D. Any persons claiming against the bond ~~or trust account~~ for a violation of
25 this Part may maintain an action at law against the credit repair services organization
26 and against the surety or trustee. The surety or trustee shall be liable only for
27 damages awarded under R.S. 9:3573.10 and not the punitive damages permitted
28 under that Section. The aggregate liability of the surety or trustee to all persons
29 damaged by a credit repair services organization's violation of this Part shall not
30 exceed the amount of the bond or trust account.

1 E. The bond ~~or the trust account~~ shall be in the amount of one hundred
2 thousand dollars.

3 ~~F. A depository holding money in a trust account under this Part may not~~
4 ~~convey money in the account to the credit repair services organization that~~
5 ~~established the account or a representative of the credit repair services organization~~
6 ~~unless the credit repair services organization or representative presents a statement~~
7 ~~issued by the office of financial institutions indicating that R.S. 9:3573.5(E) has been~~
8 ~~satisfied in relation to the account. The office of financial institutions may conduct~~
9 ~~investigations and require submission of information as necessary to enforce this~~
10 ~~Subsection.~~

11 ~~GF.~~ The credit repair services organization shall notify the ~~commissioner~~
12 attorney general in writing within thirty days after it has ceased to do business in
13 this state. The surety bond ~~or trust account~~ shall be maintained for two years after the
14 date that the credit services organization ceases operations or the date that it has filed
15 notice with the ~~Office of Financial Institutions~~ attorney general of Louisiana,
16 whichever is later.

17 **G. The failure to obtain or file the bond as required by this Section shall**
18 **constitute a violation of this Part for purposes of civil or criminal remedies or**
19 **penalties.**

20 * * *

21 §3573.6. Disclosure statement

22 A. Before executing a contract or agreement with a buyer or receiving
23 money or other valuable consideration, a credit repair services organization shall
24 provide the buyer with a statement in writing, containing:

25 * * *

26 (2) A statement explaining the buyer's right to proceed against the bond ~~or~~
27 ~~trust account~~ required by R.S. 9:3573.4.

28 * * *

29 §3573.10. Action for damages

30 * * *

1 C. A person who is entitled to recover damages, costs, or attorney fees from
2 a credit repair services organization may petition the ~~Office of Financial Institutions~~
3 **attorney general of Louisiana** for relief under any surety bond established pursuant
4 to R.S. 9:3573.4.

5 §3573.11. Orders, injunctions, and publication; availability of records to the general
6 public

7 * * *

8 B. The ~~commissioner~~ **attorney general** may, in his discretion, conduct such
9 investigations as he deems necessary to ascertain possible violations of this Part or
10 any rule, regulation, or order promulgated or issued pursuant to this Chapter. Any
11 person who is engaged in or is engaging in or is about to engage in any act or
12 practice which is prohibited by this Part or any rule, regulation, or order promulgated
13 or issued pursuant to this Chapter, or any person who has failed to act or is failing
14 to act or is about to fail to act under any affirmative duty imposed by this Part or any
15 rule, regulation, or order promulgated or issued pursuant to this Chapter, shall be
16 subject to appropriate action by the ~~commissioner~~ **attorney general**. Such action
17 shall include but shall not be limited to the issuance of orders to cease and desist or
18 to assess civil money penalties, entering into compliance agreements, seeking
19 injunctive relief from a court of competent jurisdiction, or any combination thereof.

20 C. The ~~commissioner~~ **attorney general** shall make available for inspection
21 by the general public, electronically or otherwise, any and all orders or decisions
22 arising from any violation of this Part, with respect to the following exclusively
23 enumerated actions:

24 (1) Cease and desist orders.

25 ~~(2) Denial of an application for licensure, notification, or exemption.~~

26 ~~(3) Revocation or suspension of a license, notification, or exemption.~~

27 ~~(4)~~**(2)** Assessment of civil money penalties or fines.

28 ~~(5)~~**(3)** Obtaining injunctive relief.

29 ~~(6) Unlicensed activities.~~

30 * * *

§3573.13. Criminal penalty

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B. The ~~commissioner~~ **attorney general** through an administrative action, or the district attorney of any judicial district may maintain an action to enjoin violations of this Part.

C. Costs and reasonable attorney fees shall be awarded to the ~~commissioner~~ **attorney general** or a district attorney in all injunctive actions where the commissioner or district attorney successfully enforces this Part.

* * *

§3573.16. Civil money penalties

A person who violates a provision of this Part may be fined up to one thousand dollars for each violation. The ~~commissioner~~ **attorney general** may maintain a civil action in a court of competent jurisdiction to recover such fines, together with his costs and attorney fees incident to such action.

Section 2. R.S. 9:3573.3(7), 3573.9, and 3573.17 are hereby repealed in their entirety.

* * *

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____